

REMARKS/ARGUMENTS

Claims 1-5 and 10 stand rejected, with claims 6-9 withdrawn from consideration. This Petition to the Commissioner includes a petition with respect to the restriction requirement in this national phase entry of a PCT application. Additionally, claims 1 and 4 have been amended and therefore claims 1-10 are believed pending in the application.

The Examiner's acknowledgment of Applicant's claim for priority and receipt of the certified copy of the priority document is very much appreciated. Additionally, the Examiner's consideration of Applicant's previously submitted Information Disclosure Statement is appreciated.

In section 1 on page 2 of the Official Action, the Examiner again enunciates the erroneous basis for a restriction of claims in a PCT national phase application. There is no dispute that the present case is a national phase entry of PCT International Application PCT/GB03/03552. This is set out on Applicant's PTO filing receipt.

The Manual of Patent Examining Procedure (MPEP) Section 1850, at page 1800-66, confirms that "PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 USC §111." As a result of the U.S. practice under the Patent Cooperation Treaty and the MPEP's own dictates with respect to the requirements of PCT Rule 13.2, as stated in the MPEP, "examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to categories which meet the requirements of PCT Rule 13.2."

The Examiner's rationale for restriction, i.e., "because the claims show different technical features, as stated in the Office Action filed June 8, 2006," is simply incorrect and is a statement of U.S. practice under 35 USC §111. The application of US practice is not permitted with respect to national phase entry applications.

The Commissioner is respectfully requested to point the above facts out to the Examiner and request that claims 6-9 be considered for patentability along with claims 1-5 and 10 in full compliance with the unity of invention rules of the Patent Cooperation Treaty.

In section 2, page 2 of the outstanding Official Action, the drawings stand objected to as allegedly failing to comply with Rule 84, i.e., the reference signs in Figures 9 and 10 "not mentioned in the description." Here again, the Commissioner is respectfully requested to direct the Examiner's attention to PCT application page 9, lines 18-22, of Applicant's specification. Figure 9 is discussed on page 9, lines 18-19, and Figure 10 is discussed on that same page, lines 20-22. Each of the reference numerals utilized in Figures 9 and 10 are discussed at the cited portions of page 9. Accordingly, there is no need for Applicant to add reference signs or characters to the drawings because they are already in existence in the formal drawings which are of record. Any further objection to the drawings is respectfully traversed.

The Patent Office objects to the arrangement of the specification. It is also appreciated that the Examiner has brought the arrangement of the specification to the applicant's attention. It is noted that the arrangement appears to be an indication that the originally filed specification (transmitted from WIPO) does not meet the formality requirements of the U.S. Patent and Trademark Office. The Patent Office is reminded that the U.S. Patent and Trademark Office

must comply with all articles of the Patent Cooperation Treaty (PCT) including Article 27. It has been held that:

“if the rule and interpretation of the PTO conflicts with the PCT, it runs afoul of Article 27 of the PCT which provides in part:

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.” Caterpillar Tractor v. Commissioner, 231 USPQ 590, 591 (EDVA 1986).

The Patent Office has referenced this decision in the Official Gazette dated September 9, 1986 (1070 TMOG 5).

As a consequence, the Patent Office may not require specification format changes as long as the originally submitted documents comply with the PCT requirements. Inasmuch as this specification was forwarded from WIPO, by definition, it meets the PCT requirements (it is not forwarded until it meets PCT requirements.). Therefore, the objection to the Abstract, the specification and the Notice of Draftsman’s Patent Drawing Review is respectfully traversed and reconsideration thereof is respectfully requested.

Notwithstanding the above, applicant has added headings and subheadings to the specification.

On page 6, section 4 of the Official Action, claims 4 and 10 stand rejected under 35 USC §112 (first paragraph). The Examiner suggests that Applicant’s specification does not meet the written description requirement with respect to claim 4’s “forming tool’s capabilities “ and claim 10 “disclosure on the position of the regions after bending.” Again, the Examiner’s contentions are respectfully traversed.

With respect to claim 4, the Examiner's attention is directed to Figure 7 and the discussion on page 9, lines 10-15. It is noted that claim 4 is a method claim and thus does not claim specific structure (and thus there need be no disclosure of the "forming tool's capabilities," but rather, a clear statement of the limitation on the method steps set out in Applicant's claim 1). Figure 7, and the accompanying discussion in Applicant's specification, clearly discloses the operation of the variable angle system of plates 74 and 76 which are allowed to "rotate with respect to each other." In hopes of avoiding further discussion on this matter, Applicant has slightly revised claim 4 to more clearly indicate that it relates to the "undertaking" step set out in claim 1. Any further rejection of claim 4 is respectfully traversed.

The Examiner alleges that in claim 10 there is "no clear disclosure on the position of the regions after bending." Applicant's claim 10 specifically states that "after said bending operation **the first region of the bracket extends either side of the plane** of the second region of the bracket" (emphasis added). Applicant's Figure 6 and the discussion on page 9, lines 1-4 clearly show that region 54 after bending is "no longer in the same plane as region 56." If region 56 defines a plane ("the plane of the second region of the bracket"), it is clearly seen that region 54 "extends either side of the plane." Region 54 extends above and below the plane of region 56 and therefore clearly meets the subject matter of claim 10.

Inasmuch as the subject matter of claim 10 is both discussed in the application at page 9, lines 1-4 and disclosed in Figure 6 of the description, it is completely and properly supported by Applicant's originally filed application and any further rejection thereunder is respectfully traversed.

Claims 1-3 stand rejected under 35 USC §102 as being anticipated by Machida (U.S. Patent 4,784,920). On page 6, section 6, the Examiner suggests that Machida discloses a method wherein “the fold line extend[s] only partially across the blank.” Unfortunately, the Examiner does not identify any portion of the Machida reference which discloses the fold line extending only partially across the blank. In fact, Machida teaches the direct opposite of Applicant’s claimed invention in that the Machida fold line extends completely across the blank from edge to edge. All portions of the Figure 3 embodiment are folded as shown in Figures 2 and 4 (note there is no unfolded portion illustrated anywhere in Figures 1-4 in Machida). Accordingly, because Machida not only fails to disclose Applicant’s claimed structure, but actually teaches away from Applicant’s claimed embodiments, Machida does not support any rejection of claims 1-3 under 35 USC §102 and any further rejection thereunder is respectfully traversed.

On page 7, section 7, claims 1, 3, 5 and 10 stand rejected under 35 USC §102 as being anticipated by Fogg (U.S. Patent 4,210,694). The Examiner alleges that Fogg teaches the fold line defining first and second regions of the blank and the fold line extends only partially across the blank, identifying Figure 7 as supporting this disclosure.

It is noted that, while it can be argued that Figure 7 shows a fold line which extends only partially across the blank, each of the fold lines in Figure 7 actually extends all the way across the blank. It is noted that the vertical fold lines 34 and 36 go from one edge of the blank to the slot, i.e., it is all the way across the blank from edge to edge at that location. Similarly, fold lines 30, 44 and 48 extend all the way across the blank. As a result, Fogg simply does not disclose the subject matter of Applicant’s independent claim 1.

However, Applicant has made minor amendments to claim 1 to clarify that there are non-folding portions of the blank at each end of the fold line. It is noted that in Fogg there are no non-folding portions of the blank at any end of the fold line (because the fold lines in Figure 7 (34, 36, 44, 30 and 48) all extend across the entire blank from edge to edge). Thus, Fogg clearly fails to anticipate the subject matter of Applicant's independent claim 1 or claims 3, 5 and 10 dependent thereon.

The Examiner's failure to cite any prior art against claim 4 or claims 6-9 is very much appreciated and is taken as an indication of patentability of these claims should the issues of the noted objections and withdrawal be reversed by the Commissioner.

The Commissioner's exercising of his supervisory authority with respect to the issues raised in sections 1 and 2 on page 2 of the outstanding Official Action is very much appreciated.

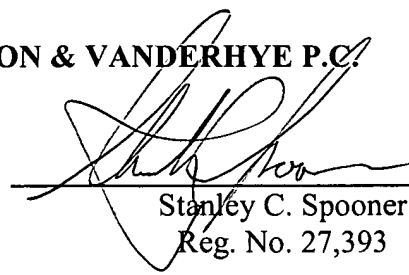
Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-10 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

KAYE
Appl. No. 10/525,063
February 12, 2007

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____

A handwritten signature in black ink, appearing to read 'Stanley C. Spooner', is written over a horizontal line. The signature is stylized with a large, looping 'S' and 'C'.

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